



SACHI A. HAMAI
EXECUTIVE OFFICER

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS

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MEMBERS OF THE BOARD

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DON KNABE
MICHAEL D. ANTONOVICH

March 3, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVE THE RECOMMENDATION OF A REFEREE TO DENY AN APPEAL FILED BY
REPRESENTATIVES OF REGAL INN LOCATED AT 3800 E. COLORADO BLVD., IN
PASADENA IN ACCORDANCE WITH COUNTY CODE SECTION 4.72.260**

SUBJECT:

As a result of an audit of hotel/motel operators in unincorporated areas of Los Angeles County, and through the appeal process, it has been determined that Regal Inn, located at 3800 E. Colorado Blvd. in Pasadena, owes Los Angeles County \$30,173 as a result of unpaid Transient Occupancy Taxes in accordance with Los Angeles County Code (Code) Chapter 4.72.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve the recommendation in the attached report from the Referee to uphold the findings of the Treasurer and Tax Collector in response to the appeal filed by Regal Inn.
2. Instruct the Executive Officer to serve a copy of this decision upon the appellant and instruct the appellant to immediately pay \$30,173 in accordance with Code Section 4.72.300.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Through an independent auditing firm retained by the Treasurer and Tax Collector through the Auditor-Controller's Master Agreement, the County conducted an audit of all hotel/motel operators in unincorporated areas of the County to determine if they were paying the tax for fiscal years 2004-05, 2005-06 and 2006-07. The auditing firm concluded that Regal Inn had not paid all required taxes and owed the County \$139,054.

Regal Inn filed an appeal of the audit findings with the Treasurer and Tax Collector, in accordance with Section 4.72.240 of the Code. The appeal was held on September 18, 2008 at which time Regal Inn provided the Treasurer and Tax Collector with additional documentation identifying information on the rates charged, taxes collected and the length of stay (i.e., daily, weekly or monthly) of each individual.

The Treasurer and Tax Collector accepted the additional information as substantial documentation that these individuals intended to stay for longer than 30 days and as such were exempt from the tax. This resulted in lowering Regal Inn's tax liability from \$139,054 to \$30,676.

Regal Inn representatives appealed this finding, in accordance with Section 4.72.250 of the Code, resulting in the second level appeal heard on January 26, 2009. The Referee appointed to hear this matter concluded that with the exception of minor mathematical errors on the schedule detailing the taxes which was subsequently reviewed and corrected by the Treasurer and Tax Collector, the determinations of the Treasurer and Tax Collector were correct, and is recommending that Regal Inn owes the County of Los Angeles \$30,173 associated with unpaid Transient Occupancy Taxes.

Implementation of Strategic Plan Goals

The recommendations are consistent with the principles of County Strategic Plan Goal No. 4 (Fiscal Responsibility) by ensuring compliance with Code, Chapter 4.72.

FISCAL IMPACT/FINANCING

Revenue will be provided to the County general fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Code Chapter 4.72 requires hotel/motel operators in the unincorporated area of the County to collect Transient Occupancy Tax at a rate of 12 percent and remit the collected tax monthly to the Treasurer and Tax Collector. The Code also permits the Treasurer and Tax Collector to audit hotel/motel operators for a period of up to three years.

The Code permits hotel/motel operators who disagree with the audit findings to appeal the findings first to the Treasurer Tax Collector, and then to your Board, who may either hear the appeal or appoint a referee.

On June 4, 2008, your Board authorized the Executive Officer of the Board of Supervisors to appoint experienced and qualified senior County managers, or qualified senior managers who have retired from County service, to act as referees, pursuant to Code Section 4.72.270.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

No impact.

Respectfully submitted,



SACHI A. HAMAI

Executive Officer, Board of Supervisors

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Attachment

c: Chief Executive Officer
County Counsel
Auditor-Controller
Treasurer and Tax Collector

February 2, 2009

Sachi Hamai, Executive Officer
County of Los Angeles, Board of Supervisors
500 West Temple Street
Los Angeles, CA 90012

Dear Ms. Hamai:

**Re: TRANSIENT OCCUPANCY TAX THIRD LEVEL APPEAL HEARING
REGAL INN MOTEL**

Representatives of the Regal Inn located at 3800 E. Colorado Blvd in Pasadena filed an appeal of the Treasurer Tax-Collector's determination that the Regal Inn owes the County \$30,676 in unpaid Transient Occupancy Taxes.

In accordance with County Code Section 4.72.260, I served as a Referee and heard the second appeal of this issue on January 26, 2009. My obligations as Referee were to hear the appellant and any other competent witnesses and decide whether the determination of the Treasurer Tax-Collector's was correct or not, and if not what tax, interest or penalties, if any, are due to the County from the appellant.

There were minor mathematical errors on the schedule detailing the taxes, interest and penalties owed. The Treasurer Tax-Collector has corrected the schedule and the revised balance totals \$30,173. In my opinion, other than the minor math error just discussed, the determinations of the Treasurer Tax-Collector were correct and that Regal Inn owes the County of Los Angeles \$30,173 associated with unpaid Transient Occupancy Taxes. Accordingly, I believe that Regal Inn's appeal should be denied.

Background

Section 4.72 of the County Code applies to all hotel/motel operators in the unincorporated area of the County. Basically, it requires the hotel operators to collect a tax equal to 12% of the total rent paid from all persons defined by the Code as a transient and to remit these payments to the County on a monthly basis. In general, the code defines a transient as any person staying at the hotel for a period of 30 consecutive calendar days or less. The code does provides for waiving the tax for the first 30 days in cases where there is a written agreement, in advance, documenting the fact that the person intends on staying at the hotel for a period in excess of thirty days.

The County hired an independent auditing firm to conduct an audit of all hotel/motel operators to determine if they were paying the tax for fiscal years 2004-05, 2005-06 and 2006-07. The Auditor concluded that Regal Inn had not paid all required taxes and owed the County \$139,054.

Regal Inn filed an appeal of the audit findings with the Treasurer Tax-Collector. The appeal was held on September 18, 2008. At that hearing, Regal Inn provided the Treasurer Tax-Collector with registration cards for persons who stayed at the hotel during the audit period. These cards included information on the rates charged, taxes collected and the length of stay (i.e., daily, weekly or monthly) of each individual.

Although these registration cards were not in the form of the formal agreement required by the County Code, the Treasurer Tax-Collector did accept all cards that were annotated with a monthly rate as substantial documentation that these individuals intended to stay for longer than 30 days and as such were exempt from the tax. This resulted in lowering Regal Inn's tax liability to \$30,676.

Regal Inn representatives appealed this finding, resulting in the second level appeal heard on January 26, 2009.

Second Level Appeal

Mr. Bhupendra Bhakta from Regal Inn was present at the hearing and testified as well as a patron of the hotel who testified on the hotel's behalf. Elizabeth Ginsburg from the Treasurer-Tax Collector and Barbara Goul from the Office of the County Counsel were also present.

The \$30,067 in taxes, penalties and interest owed by Regal Inn to the County are associated with individuals who:

- Did not sign the required agreement requesting an exemption to the tax based on their intent to stay at the hotel in excess of 30 days.
- Did not sign a registration card with a monthly rate. These were all individuals who had signed registration cards with either a daily or weekly rate.

The basis of Regal Inn's appeal is that they believe that the taxes required by the code for the first 30 days of occupancy should not apply in any instance where an individual happens to ultimately stay in excess of 30 days. They also indicated that they were merely following the practices of the prior owners (2005) and that they thought they were complying with County requirements.

I did not find these arguments compelling for the following reasons:

- The code clearly states that - "... Any such person so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired unless

there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.”

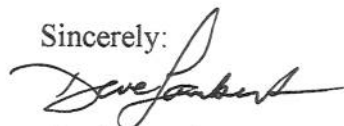
- Regal Inn did not prepare the required written agreements for any of the individuals staying at the hotel.
- The code also specifies that taxes are to be collected at the time the rent is paid. The records presented indicate that even though Regal Inn collected rent on a daily basis, they did not collect the required taxes.
- The code also requires every hotel operator to keep and preserve, for not less than three years, all records which may be necessary to determine the amount of such tax. Regal Inn did not maintain adequate records in this regard.
- Any business practices of the prior hotel owner are not relevant to this appeal. Regardless of what they actually were, they do not relieve Regal Inn of its obligation to comply with County Code provisions related to the transient occupancy tax.

Essentially, the County Code does not provide for a retroactive application of exemptions for individuals who ultimately stay at the hotel in excess of thirty days. The code is clear in that a formal agreement must be signed in advance as evidence of the individual's intent to stay for more than 30 days. In addition, despite the fact that Regal Inn collected the hotel fee from the applicable occupants in advance of their stay, based on the records presented, they did not collect the required taxes at that time, even though the applicable registration cards indicated that the length of stay was to be on a daily or weekly basis (i.e., less than 30 days).

Because of these reasons, I believe the determinations of the Treasurer Tax-Collector were correct and that Regal Inn owes the County of Los Angeles \$30,173 associated with unpaid Transient Occupancy Taxes.

Please let me know if you have any questions.

Sincerely:

A handwritten signature in black ink, appearing to read "David Lambertson", written over the word "Sincerely:".

David Lambertson